

**Letter of Findings: 01-20190404**  
**Income Tax**  
**For the Years 2010-2014**

**NOTICE:** IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

### HOLDING

Married couple established that they had no Indiana domicile from 2010 through 2014. They also provided Indiana returns for those years establishing zero Indiana income tax due. Therefore, the Department's assessments for 2010 to 2014 Indiana income tax were proven incorrect. Penalty is also abated.

### ISSUES

#### **I. Income Tax—Residency/Domicile.**

**Authority:** IC § 6-1.1-12-37; IC § 6-3-1-12; IC § 6-8.1-5-1; *State Election Bd. v. Bayh*, 521 N.E.2d 1313 (Ind. 1988); *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); [45 IAC 3.1-1-22](#); [50 IAC 24-2-5](#).

Taxpayers protest the imposition of Indiana individual income tax.

#### **II. Tax Administration—Penalties.**

**Authority:** IC § 6-3-4-4.1; IC § 6-8.1-10-2.1.

Taxpayers protest the imposition of penalties.

### STATEMENT OF FACTS

Taxpayers ("Husband" and "Wife") are a married couple. The Indiana Department of Revenue ("Department") determined that Taxpayers were domiciled in Indiana for the tax years 2010 through 2014 ("Tax Years") but that Taxpayers neither filed Indiana individual income tax returns nor paid any Indiana individual income tax for those years. The Department therefore issued proposed assessments for income tax, penalties, and interest for those years. Taxpayers protested the Department's determination of domicile and the imposition of income tax plus penalty. An administrative hearing was held and this Letter of Findings results. Further facts will be supplied as required.

#### **I. Income Tax—Residency/Domicile.**

### DISCUSSION

Taxpayers protest the imposition of Indiana adjusted gross income tax for the tax years 2010 through 2014. The Department determined that Taxpayers were Indiana domiciliaries for the Tax Years based primarily on the information that Taxpayers had claimed the homestead credit on an Indiana residence. Taxpayers state that they were domiciled in other states throughout the Tax Years and had not been residents of Indiana since moving to another state in 2009. Further, the property to which the homestead credit was applied was actually rental property owned by Taxpayers. In 2014, the county where the rental home was located determined that Taxpayers were not eligible for the homestead credit for the Tax Years at issue. Taxpayers reimbursed the county for the erroneously claimed homestead credit. Taxpayers acknowledge that the rental income from the Indiana residence was subject to Indiana adjusted gross income tax. Taxpayers filed Indiana income tax returns for the tax years showing Indiana rental income offset by Indiana rental losses, the effect of which was that no Indiana income tax was due. Therefore, Taxpayers argue, they did not owe any Indiana income tax for those years.

As a threshold issue, it is Taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Consequently, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Further, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing. . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision shall be entitled to deference.

Pursuant to IC § 6-3-1-12, a resident is defined as follows:

The term "resident" includes (a) any individual who was domiciled in this state during the taxable year, or (b) any individual who maintains a permanent place of residence in this state and spends more than one hundred eighty-three (183) days of the taxable year within this state, or (c) any estate of a deceased person defined in (a) or (b), or (d) any trust which has a situs within this state.

In other words, a resident includes individuals who are domiciled in Indiana and/or maintain a permanent place of residence in Indiana and then spend more than 183 days in Indiana. In this case, Taxpayers were able to establish that they did not spend more than 183 days in Indiana during the Tax Years. Therefore, in order to be considered a resident of Indiana during the Tax Years in question, Taxpayers must have been domiciled here.

[45 IAC 3.1-1-22](#) further defined "Domicile" during the tax year at issue as:

"Domicile" Defined. For the purposes of this Act, a person has only one domicile at a given time even though that person maintains more than one residence at that time. Once a domicile has been established, it remains until the conditions necessary for a change of domicile occur.

In order to establish a new domicile, the person must be physically present at a place, and must have the simultaneous intent of establishing a home at that place. It is not necessary that the person intend to remain there until death; however, *if the person, at the time of moving to the new location, has definite plans to leave that new location, then no new domicile has been established.*

The determination of a person's intent in relocating is necessarily a subjective determination. There is no one set of standards that will accurately indicate the person's intent in every relocation. The determination must be made on the facts present in each individual case. *Relevant facts in determining whether a new domicile has been established include, but are not limited to:*

- (1) Purchasing or renting residential property.
- (2) *Registering to vote.*
- (3) Seeking elective office.
- (4) *Filing a resident state income tax return or complying with the homestead laws of a state.*
- (5) Receiving public assistance.
- (6) Titling and registering a motor vehicle.
- (7) Preparing a new last will and testament which includes the state of domicile.  
(*Emphasis added*).

Thus, a new domicile is not necessarily created when an individual moves to an address outside Indiana. Instead, the individual must move to the new non-Indiana address and have intent to remain at that non-Indiana address.

Since [45 IAC 3.1-1-22](#) referred to the homestead credit as a factor in determining domicile, the relevant statute regarding the homestead credit is IC § 6-1.1-12-37(a)(2) which states in relevant part:

"Homestead" means an individual's principal place of residence:

(A) *that is located in Indiana;*

(B) *that:*

(i) *the individual owns;*

(ii) *the individual is buying under a contract; recorded in the county recorder's office, that provides that*

- the individual is to pay the property taxes on the residence;
- (iii) the individual is entitled to occupy as a tenant-stockholder (as defined in 26 U.S.C. 216) of a cooperative housing corporation (as defined in 26 U.S.C. 216); or
- (iv) is a residence described in section 17.9 of this chapter that is owned by a trust if the individual is an individual described in section 17.9 of this chapter; and

(C) *that consists of a dwelling and the real estate, not exceeding one (1) acre, that immediately surrounds that dwelling.*

Except as provided in subsection (k), the term does not include property owned by a corporation, partnership, limited liability company, or other entity not described in this subdivision.

*(Emphasis added).*

Therefore, when they claimed the homestead deduction, Taxpayers claimed that the dwelling was their principal place of residence, as provided by IC § 6-1.1-12-37(a)(2). Also, [50 IAC 24-2-5](#) states:

"Principal place of residence" means an individual's true, fixed, permanent home to which the individual has the intention of returning after an absence.

Next, the Indiana Supreme Court considered the issue of the meaning of "domicile" in *State Election Bd. v. Bayh*, 521 N.E.2d 1313, 1317 (Ind. 1988), in which the court provided:

Domicile means "the place where a person has his true, fixed, permanent home and principal establishment, and to which place he has, whenever he is absent, the intention of returning." *Turner*, 241 Ind. at 80, 168 N.E.2d at 196. Domicile can be established in one of three ways: "domicile of origin or birth, domicile by choice, and domicile by operation of law." *Croop*, 199 Ind. at 271, 157 N.E. at 278. The domicile of an unemancipated minor is determined by the domicile of his parents. *Hiestand v. Kuns* (1847), 8 Blackf. 345.

Once acquired, domicile is presumed to continue because "every man has a residence somewhere, and ... he does not lose the one until he has gained one in another place." *Scott*, 171 Ind. at 361, 86 N.E. at 413.

**Establishing a new residence or domicile terminates the former domicile.** A change of domicile requires an actual moving with an intent to go to a given place and remain there. "It must be an intention coupled with acts evidencing that intention to make the new domicile a home in fact.... **[T]here must be the intention to abandon the old domicile; the intention to acquire a new one; and residence in the new place in order to accomplish a change of domicile.**" *Rogers*, 226 Ind. at 35-36, 77 N.E.2d at 595-96.  
*(Emphasis added).*

Therefore, an examination of Taxpayers' acts is required to determine if Taxpayers had the intention to acquire a new domicile outside Indiana and to abandon their domicile in Indiana.

In this case, the Department determined that, since they were listed as having claimed a homestead credit on an Indiana residence, Taxpayers were considered to have been domiciled in Indiana. In the course of the protest process, Taxpayers were able to provide substantial documentation such as voter registration, property tax records, and driver licenses supporting their position that they moved to another state with the intent to remain in that state permanently and to abandon their Indiana domicile in 2009. Taxpayers subsequently moved to another state and did not move back to Indiana during the Tax Years.

Taxpayers were also able to establish that they were not eligible for the homestead credit, and that they reimbursed the county for the erroneously claimed homestead credit. This, along with the supporting documentation establishing their new domiciles in the other states, means that Taxpayers no longer had an Indiana domicile as provided under the decision in *Bayh* and [45 IAC 3.1-1-22](#). Also, Taxpayers presented Indiana income tax returns for the Tax Years which showed that the rental income from the property was negated by losses so that zero Indiana income tax was due for the tax years. Taxpayers have met the burden imposed by IC § 6-8.1-5-1(c) of proving the proposed assessment wrong.

## FINDING

Taxpayers' protest is sustained.

## II. Tax Administration—Penalties.

## DISCUSSION

Taxpayers protest the imposition of two penalties. One is the negligence penalty. The other is the estimated tax penalty. The Department may impose penalties under IC § 6-8.1-10-2.1 and IC § 6-3-4-4.1. While Taxpayers did not properly file returns in a timely manner, through the protest process they were able to establish that no Indiana income tax was due for the tax years. Since Taxpayers were sustained in whole on Issue I above, the imposition of penalties is moot.

### **FINDING**

Taxpayers' protest of penalties is sustained.

### **SUMMARY**

Taxpayers' Issue I protest regarding the imposition of Indiana individual income tax is sustained.  
Taxpayers' Issue II protest regarding the imposition of penalties is sustained.

August 16, 2019

*Posted: 10/30/2019 by Legislative Services Agency*  
An [html](#) version of this document.